

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1262 of 1993

1. Shanmugaiah
2. Ganesan .. Appellants

-Vs-

1. Thirumalayandi alias
Thirumalai Pandaram
2. Velu Pandaram alias Subbiah
3. Jayarathinammal
4. Thayammal
5. Muthammal
6. Valliammal .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 11.2.1993 made in A.S.No.106 of 1987 on the file of the Sub Court, Tenkasi, confirming the judgment and decree dated 2.9.1986, made in O.S.No.291 of 1975 on the file of the District Munsif of Tenkasi.

!For Appellants : Mr.T.M.Hariharan

^For Respondents : P.Peppin Fernando for R1

:JUDGMENT

The plaintiffs 4 and 5 in a suit for declaration and other consequential reliefs, who lost their case before both the Courts below, are the appellants herein.

2. Short facts necessary for the disposal of this appeal are as follows:

The suit property originally belonged to one Muthu Pandaram. He had three sons, who are the defendants 1 and 2 and one Eswara Pandaram. The third defendant is the wife of the second defendant. On the demand for making an arrangement, at the time of the marriage of the third defendant with the second defendant, the second defendant executed a registered settlement deed on 6.1.1950 under Ex.A1 in respect of his undivided 1/3rd share in the property, wherein the third defendant has been given a life estate, and thereafter, the property should go to the heirs of the second and third defendants. The first defendant and the other brother Eswara Pandaram also gave their consent. The said settlement deed came into force. The second and

third defendants left the property in the hands of the first defendant and went away. Even having the thorough knowledge of the settlement deed, the defendants were making attempts to dispose of the property and were making alienation thereon. In such circumstances, there arose a necessity for filing the suit for the said reliefs.

3. The defendants 2 and 3 remained ex-parte before the trial Court.

The suit was resisted by the first defendant stating that the property originally belonged to Muthu Pandaram; that on his death, the property came to the hands of the first and second defendants and their brother Eswara Pandaram and their mother Shanmugathammal; that the alleged settlement deed dated 6.1.1950 is not valid in law, since the second defendant could not execute such a settlement deed in respect of his undivided share in the joint family properties; that it is not correct on the part of the plaintiffs to state that the settlement deed came into force and they were enjoying the respective shares; that the first defendant purchased the undivided share of Eswara Pandaram; that he also constructed a house therein; that he has dealt with the properties, according to the rights, and thus, the suit claim was to be rejected.

4. The trial Court framed the necessary issues, tried the suit and dismissed the same. On appeal by the plaintiffs 4 and 5, their case was also rejected by the first appellate Court. Hence, this second appeal has arisen before this Court.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Whether the first defendant, witness to Ex.A1, a registered document, can deny knowledge and signing of Ex.A1?

(2) Whether Ex.A1, which provides to the 3rd defendant, only a joint right of enjoyment with the second defendant for life, can be construed as an absolute gift of an undivided interest in coparcenary property?

6. This Court heard the learned Counsel for the appellants and also the learned Counsel for the first respondent on those contentions.

7. As could be seen from the rival contentions, the whole case rests upon the validity of the settlement deed, marked as Ex.A1, alleged to have been executed by the second defendant in favour of his wife, the third defendant on 6.1.1950. A reading of the document would clearly reveal that nothing was referred to therein as to the maintenance. It is not in controversy that the property originally belonged to Muthu Pandaram, who had three sons namely the defendants 1 and 2 and one Eswara Pandaram. The witnesses examined on the side of the plaintiff, went to the extent of stating that there was an oral division of property before the execution of the document in question. But, it has been rightly rejected by the Courts below, since it was not proved. That apart, it went against the document, under which the plaintiff claimed the relief. The document would contain a recital to the effect that the property is a joint one, and the settlement deed was executed by the second defendant in favour of the first defendant in respect of the undivided 1/3rd share. It is well settled proposition of law that one of the coparceners in the coparcenary without the consent of the other coparceners cannot execute a settlement deed, as one done in the case on hand. In the instant case, there has been a clear averment in the plaint to the effect that at the time of execution of the settlement deed under Ex.A1 by the second defendant in favour of the third defendant, his wife, both of his

brothers were also consenting parties to the same. But, nowhere it is stated so in Ex.A1 document. One of the witnesses to Ex.A1 is the first defendant as identifying witness to the settlor, and thus, at no stretch of imagination, it can be taken that he was a consenting party to such a settlement being made.

8. The learned Counsel for the first respondent in support of his contention relied on a decision of this Court reported in (2003) 1 M.L.J. 145 (KANNA GOUNDER AND ANOTHER V. ARJUNA GOUNDER), which in the opinion of this Court, squarely applies to the present facts of the case. In the instant case, though the second defendant can dispose of his undivided interest in the coparcenary property by way of a settlement deed, he cannot create the same without the consent of all the other coparceners. Since the relief sought for by the plaintiff solely rested on the validity of the settlement deed, and the settlement deed is declared invalid, the plaintiffs cannot have the relief on the basis of the same. Both the Courts below were perfectly correct in finding so both on factual and legal position. This Court is unable to notice any reason to disturb the concurrent finding of both the Courts below.

9. In the result, this second appeal is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes

Internet: yes

To:

1. The Subordinate Judge

Tenkasi

2. The District Munsif

Tenkasi

3. The Record Keeper

V.R. Section

High Court, Madras.

nsv/

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